

1 Robert A. Weikert (Bar No. 121146)  
[rweikert@nixonpeabody.com](mailto:rweikert@nixonpeabody.com)  
2 Dawn N. Valentine (Bar No. 206486)  
[dvalentine@nixonpeabody.com](mailto:dvalentine@nixonpeabody.com)  
3 NIXON PEABODY LLP  
4 One Embarcadero Center  
5 San Francisco, California 94111-3600  
Tel: (415) 984-8200  
Fax: (415) 984-8300

6 David L. May (appearance *pro hac vice*)  
[dmay@nixonpeabody.com](mailto:dmay@nixonpeabody.com)

7 Jennette E. Wiser (appearance *pro hac vice*)  
[jwiser@nixonpeabody.com](mailto:jwiser@nixonpeabody.com)

8 NIXON PEABODY LLP  
799 9th Street NW  
9 Washington, DC 20001-4501  
10 Tel: (202) 585-8000  
Fax: (202) 585-8080

11 Jason T. Kunze (appearance *pro hac vice*)  
[jkunze@nixonpeabody.com](mailto:jkunze@nixonpeabody.com)

12           NIXON PEABODY LLP  
13           70 West Madison Street, 35<sup>th</sup> Floor  
14           Chicago, IL 60602  
15           Tel: (312) 977-4400  
16           Fax: (312) 977-4405

15 || Attorneys for Stardock Systems, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

19 | STARDOCK SYSTEMS, INC..

Case No.: 4:17-cv-07025-SBA

20 Plaintiff.

**SECOND DECLARATION OF ROBERT A.  
WEIKERT IN SUPPORT OF STARDOCK  
SYSTEMS, INC.'S MOTION FOR  
PRELIMINARY INJUNCTION**

21

22 PAUL REICHE III and ROBERT FREDERICK FORD

## Defendants

25 || AND RELATED COUNTERCLAIM

SECOND WEIKERT DECLARATION IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION

Case No. 17-cv-07025-SBA

1 I, Robert A. Weikert declare:

2 1. I am a partner at Nixon Peabody LLP, counsel of record for plaintiff Stardock  
3 Systems, Inc. ("Stardock"). I make this declaration in support of Stardock's Motion for a  
4 Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction. Unless  
5 otherwise noted, I have personal knowledge of the following and, if called upon to do so, would  
6 and could testify competently to the same in a court of law.

7 2. Attached hereto as Exhibit A is a true and correct copy of a September 8, 2018  
8 through September 13, 2018 email exchange between me and Stephen C. Steinberg, attorney of  
9 record for Defendants and Counter-Claimants in the above-captioned Action.

10 3. Attached hereto as Exhibit B is a true and correct copy of a law review article by  
11 Lydia Pallas Loren entitled "Deterring Abuse of the Copyright Takedown Regime by Taking  
12 Misrepresentation Claims Seriously," 46 Wake Forest L. Rev. 745 (2011).

13 4. Attached hereto as Exhibit C is a true and correct copy of a law review article by  
14 Wendy Seltzer entitled "Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of  
15 the DMCA on the First Amendment," Harvard Journal of Law & Technology, Vol. 24, Number 1  
16 Fall 2010.

17 5. Attached hereto as Exhibit D is a true and correct copy of comments by Automatic  
18 Inc. in the Matter of Section 512 Study on file with the United States Copyright Office Library of  
19 Congress, Washington, D.C.

20 6. Attached hereto as Exhibit E is a true and correct copy of an excerpt from the U.S.  
21 Copyright Office's Compendium, Chapter 300, Copyrightable Authorship, "Words and Short  
22 Phrases."

23 7. Attached hereto as Exhibit F, for the Court's convenience, are pages 3 through 24 of  
24 Stardock's Second Amended Complaint filed on July 16, 2018 (the referenced exhibits are  
25 attached to the actual Complaint as filed), a copy of which was appended as Exhibits A through T  
26 to the Declaration of Robert A. Weikert in Support of Stardock System's Motion for a Temporary

1 Restraining Order and Order to Show Cause for a Preliminary Injunction filed on September 7,  
2 2018.

3 I declare under penalty of perjury under the laws of the United States and the State of  
4 California that the foregoing is true and correct.

5 Executed this 21st day of September 2018.

6 /s/ Robert A. Weikert  
7 Robert A. Weikert

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

- 3 -

---

28 SECOND WEIKERT DECLARATION IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION

Case No. 17-cv-07025-SBA